

**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

EH SAY,)	
)	
Plaintiff)	
)	
v.)	Case No.: 1:15-cv-135
)	
VERDE ENERGY USA, INC.,)	COMPLAINT AND DEMAND FOR
)	JURY TRIAL
Defendant)	

COMPLAINT

EH SAY (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against VERDE ENERGY USA, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the Commonwealth of Pennsylvania and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing Erie, Pennsylvania 16502.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation that has its office located in Norwalk, Connecticut 06851.

8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that he has had for more than one year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Plaintiff never provided permission to Defendant to call his cellular telephone number or to contact him regarding any goods or services offered by Defendant.

14. Beginning in March 2015, and continuing through April 2015,

1 Defendant called Plaintiff on his cellular telephone.

2 15. When contacting Plaintiff on his cellular telephone, Defendant used an
3 automatic telephone dialing system and automatic and/or pre-recorded messages.

4 16. Defendant's messages would state its name and that its call was "for
5 marketing purposes."
6

7 17. Defendant's telephone calls were not made for "emergency purposes."

8 18. For example, Defendant called Plaintiff on: April 14, 2015 (twice)
9 and April 15, 2015.
10

11 **DEFENDANT VIOLATED THE**
12 **TELEPHONE CONSUMER PROTECTION ACT**

13 19. Plaintiff incorporates the forgoing paragraphs as though the same were
14 set forth at length herein.

15 20. Defendant initiated multiple automated telephone calls to Plaintiff's
16 cellular telephone using a prerecorded voice.

17 21. Defendant initiated these automated calls to Plaintiff using an
18 automatic telephone dialing system.
19

20 22. Defendant's calls to Plaintiff were not made for emergency purposes.

21 23. Defendant's calls to Plaintiff, in and after March 2015, were not made
22 with Plaintiff's prior express consent.
23
24
25

1 24. Defendant's acts as described above were done with malicious,
2 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
3 under the law and with the purpose of harassing Plaintiff.

4 25. The acts and/or omissions of Defendant were done unfairly,
5 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
6 lawful right, legal defense, legal justification or legal excuse.

7 26. As a result of the above violations of the TCPA, Plaintiff has suffered
8 the losses and damages as set forth above entitling Plaintiff to an award of
9 statutory, actual and trebles damages.
10

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, EY SAY, respectfully prays for a judgment as
14 follows:
15

- 16 a. All actual damages suffered pursuant to 47 U.S.C. §
17 227(b)(3)(A);
18 b. Statutory damages of \$500.00 per violative telephone call
19 pursuant to 47 U.S.C. § 227(b)(3)(B);
20 c. Treble damages of \$1,500.00 per violative telephone call
21 pursuant to 47 U.S.C. §227(b)(3);
22 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
23 e. Any other relief deemed appropriate by this Honorable Court.
24
25

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, EY SAY, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 5/22/2015

KIMMEL & SILVERMAN, P.C.

By: /s/ Craig Thor Kimmel
CRAIG THOR KIMMEL
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com